

Nos. 12289-12290-12291

United States
Court of Appeals
For the Ninth Circuit.

ESTATE OF ELLA K. McCLATCHY, ELEANOR
McCLATCHY and CHARLOTTE MALONEY,
Executrices,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CHARLOTTE MALONEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ELEANOR McCLATCHY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Upon Petitions to Review Decisions of the Tax Court
of the United States.

FILED

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

JOHN W. BURROWS, C.P.A.

JOHN J. HAMLYN

For Respondent:

A. J. HURLEY

R. C. WHITLEY

The Tax Court of the United States

Docket No. 13214

ELEANOR McCLATCHY and CHARLOTTE MALONEY, EXECUTRICES of the ESTATE OF ELLA K. McCLATCHY,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated December 11, 1946; and, as a basis for this proceeding, allege as follows:

(1) The petitioners are the executrices of the Estate of Ella K. McClatchy, with headquarters at 911 Seventh Street, Sacramento, California. The returns for the period here involved were filed with the Collector of Internal Revenue for the First District of California, at San Francisco.

(2) The notice of deficiency (a copy of which is attached hereto and marked "Exhibit A") was mailed to the petitioners on December 11, 1946.

(3) The taxes in controversy are income taxes for the calendar years 1942 and 1943, in the amounts of \$9,693.73 and \$4,761.37 respectively. (See Exhibits B and C attached hereto).

(4) The determination of taxes set forth in the said notice of deficiency is based upon the following errors:

(A) The Commissioner, in his deficiency notice, fails to credit the taxpayer with the full amount of tax already assessed and paid.

(B) In both years, 1942 and 1943, the Commissioner proposes to levy tax upon an amount of \$1,300.00 representing "dividends" received from the James McClatchy Company. The Estate of Ella K. McClatchy never received any such sums from the James McClatchy Company, either as "dividends" or in any other form.

(C) In 1942 the Estate of Ella K. McClatchy was called upon to pay to the State of California a sum of \$9,374.18 representing additional income taxes assessed against the decedent Ella K. McClatchy for the years 1935 and 1936, together with interest thereon. The payment was claimed as a deduction in the 1942 return of the Estate. The Commissioner proposes to disallow such deduction.

(D) In 1943 the State of California levied against the heirs of Ella K. McClatchy—i.e., against the Estate of Ella K. McClatchy—additional inheritance taxes to the amount of \$2,223.41. The petitioners claim that this interest payment is a proper deduction from the income of the Estate; the Commissioner refuses to so recognize it.

(5) The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(A)—(1) The original return of the Estate of Ella K. McClatchy for the year 1942 showed a tax

liability of \$59,289.89, which was duly paid in 1943.

(A)—(2) In January 1947 the Estate of Ella K. McClatchy received a demand from the Collector at San Francisco for 1942 income tax due and payable in the amount of \$1,669.93. This demand—(plus interest of \$362.05)—was paid in February, 1947.

(A) —(3) The original return of the Estate of Ella K. McClatchy for the year 1943 showed a tax liability of \$60,396.92, which was duly paid in 1944.

(A)—(4) In January 1947 the Estate of Ella K. McClatchy received a demand from the Collector at San Francisco for 1943 income tax due and payable in the amount of \$1,064.50. This demand—(plus interest of \$166.92)—was paid in February, 1947.

(B)—(1) James McClatchy, the founder of what is now the McClatchy Newspapers corporate enterprise, died some sixty-odd years ago, leaving behind him a widow, Charlotte; two sons approaching manhood, Charles and Valentine; two minor daughters, Frances (Fanny) and Emily; and a majority interest in a newspaper plant in Sacramento, California. His estate (consisting almost entirely of his interest in the "Sacramento Bee") was devised to his widow.

Mrs. Charlotte McClatchy carried on the business of publishing the Sacramento Bee for a few years following James McClatchy's death. Then, when the two sons attained majority and developed responsibility, she turned the Bee over to them as

joint proprietors. The consideration for the transfer was a verbal agreement on the part of the two young men that they would support their mother and their two sisters for as long as they each should live.

The two McClatchy sons took over the "Sacramento Bee" and prospered. Along about 1898 they decided to build a new plant; and, in order to handle the enlarged venture, pooled all of their resources and formed a corporation named the James McClatchy Company. This last-named corporation took title to the physical properties of the "Sacramento Bee," and assumed certain capital obligations of the two McClatchy brothers—among which assumed obligations there was included the agreement covering the support of Mrs. Charlotte McClatchy and her two daughters for the terms of their natural lives.

(Mrs. Charlotte McClatchy died in 1913. Emily McClatchy died in 1946. Fanny McClatchy (Richardson) is still alive at this writing.)

(B)—(2) In 1923 the two McClatchy brothers severed their business relations. Charles—(universally known as "C.K.")—retained the newspaper and acquired complete ownership of the James McClatchy Company. The obligation for support of the two McClatchy sisters became, therefore, an obligation of the "C.K." organization—(which later developed into the present McClatchy Newspapers corporation).

(B)—(3) The sums paid, year by year, to the two McClatchy sisters were never considered, or

claimed, as deductions from the taxable incomes of either the two McClatchy brothers—or from the taxable income of the James McClatchy Company.

(B)—(4) In 1935 the Commissioner of Internal Revenue, in his determination of the income tax liability of Charles K. McClatchy for the year 1932, evolved the unique theory that the payments by the James McClatchy Company to the two McClatchy sisters were equivalent to a dividend distribution to Charles K. McClatchy—(followed by a gift from him to his two sisters). This theory was not acceptable and the question was referred to the Board of Tax Appeals. The Board referred the case back to the Technical Staff; and in 1936 an agreement was effected with the Technical Staff—and approved by the Board of Tax Appeals—whereby \$5,200.00 of the amounts paid to the two McClatchy sisters was to be considered as taxable to Charles K. McClatchy. Since 1932, Charles K. McClatchy and his descendants have paid income taxes to the federal government each year on an amount of \$5,200.00 “dividend” income.

(B)—(5) In 1942 and 1943 the Estate of Ella K. McClatchy held one-fourth of the common capital stock of McClatchy Newspapers—the parent stockholder of, and the eventual successor to the James McClatchy Company. Upon this basis the Commissioner proposes to add to the taxable income of the said Estate of Ella K. McClatchy in each of the years 1942 and 1943 the sum of \$1,300.00, representing one-fourth of the \$5,200.00 “dividend” described in the preceding paragraphs.

(C)—(1) The California Personal Income Tax Act of 1935 contained a provision (Section 34 of the Act) which had the effect of placing a “personal-service” corporation in the same category as a partnership for purposes of taxation. This section of the law provoked a great deal of controversy and some considerable action in the courts. The constitutionality of the section was attacked—and a test case (*McCreery v. McClogan*, 17c. (2d) 555) was carried to the State Supreme Court for decision.

(C)—(2) In 1939 the State Tax Commissioner, acting under the provisions of Section 34 of the Personal Income Tax Act, asserted against Ella K. McClatchy additional income taxes for the years 1935 and 1936 totalling \$7,110.22. This asserted tax was protested; and was held in abeyance pending the opinion of the State Supreme Court.

(C)—(3) Ella K. McClatchy died in September 1939. On March 7, 1941 the State Supreme Court ruled against *McCreery* and held Section 34 of the Personal Income Tax Act to be constitutional. The State Tax Commissioner re-asserted the additional tax of \$7,110.22 in March 1942—and the said tax, together with \$2,264.59 interest, was paid out of the funds of the Estate of Ella K. McClatchy.

(C)—(4) The petitioners, in the return of the Estate for 1942, claimed deductions of \$7,110.22 and \$2,264.59. The respondent Commissioner proposes to disallow the \$7,110.22 tax deduction in full—and \$1,150.67 of the \$2,264.59 interest deduction.

(C)—(5) The report of the examining revenue agent in this case issued September 19, 1945. The recommendations of the examiner are repeated, without change, in the deficiency notice of December 11, 1946. In the examiner's report it is stated:

"These taxes"—(viz., the \$7,110.22 state taxes for 1935 and 1936)—"accrued on September 29, 1939, the date of death of the decedent. The deduction was allowable in the return of the decedent
* * *."

(C)—(6) Accordingly, on October 9, 1945, appropriate claim for refund of taxes erroneously paid by the decedent Ella K. McClatchy for 1939 was filed with the Collector at San Francisco. This claim was denied by the respondent Commissioner January 6, 1947.

(D)—(1) In December, 1943, the State of California demanded additional inheritance taxes from the heirs of Ella K. McClatchy, together with interest on the said additional taxes amounting to \$2,223.41. This interest (as well as the additional tax) was paid out of the funds of the Estate of Ella K. McClatchy in December 1943, but was, by reason of a bookkeeping error, overlooked and omitted in the preparation of the 1943 return of the Estate.

Wherefore, the petitioners pray that this Court may hear this proceeding and determine the amount of the liability of the Estate of Ella K. McClatchy

for income taxes for the two calendar years 1942 and 1943.

/s/ JOHN W. BURROWS,
C.P.A. Counsel for Petition-
ers, 1095 Market St., San
Francisco, California.

Of Counsel:

/s/ JOHN J. HAMLYN,
911 Seventh Street, Sacra-
mento, California.

EXHIBIT A

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Office of
Internal Revenue Agent in Charge
San Francisco Division
IRA:90-D-DuF
(C;TS;PD SF:EDR)

Dec. 11 1946

Estate of Ella K. McClatchy, Deceased
Eleanor McClatchy and
Charlotte Maloney, Executrices
911 Seventh Street
Sacramento, California

Dear Mesdames:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1942 discloses a deficiency of \$8,639.98 and that the determination of your income and vic-

tory tax for the taxable year ended December 31, 1943 discloses a deficiency of \$1,731.25 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,

Commissioner.

By /s/ F. M. HARLESS,

Internal Revenue Agent
in Charge.

STATEMENT

San Francisco

IRA : 90-D-DuF

(C:TS:PD

SF: EDR)

Estate of Ella K. McClatchy, Deceased

Eleanor McClatchy and

Charlotte Maloney, Executrices

911 Seventh Street

Sacramento, California

Tax Liability for the Taxable Years Ended December 31, 1942 and December 31, 1943

Year	Deficiency
1942 Income tax.....	\$8,639.98
1943 Income and victory tax.....	1,731.25

In making this determination of your tax liability, careful consideration has been given to your protest of October 2, 1945; to the statements made at the conferences held on October 29, 1945, May 10, 1946 and June 13, 1946.

A copy of this letter and statement has been mailed to your representative, Mr. John W. Burrows, Central Tower, 703 Market Street, San Francisco, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

Adjustments to Net Income
Year: 1942

Net income as disclosed by return.....	\$93,051.67
Unallowable deductions and additional income:	
(a) Dividends	\$1,152.87
(b) Interest income	192.07
(c) Interest expense	1,224.86
(d) Taxes	7,110.22
(e) Other deductions	1,097.45
	10,777.47
Net income as adjusted.....	\$103,829.14

Explanation of Adjustments

Corporations	Reported	Paid	Increase or (decrease)
100 Briggs Mfg. Co.....	\$150.00	\$ 200.00	\$ 50.00
100 Simmons Co.	173.64	124.01	(49.63)
30 American Tel. & Tel.....	337.50	270.00	(67.50)
210 Transamerica Corporation..	80.00	Non-taxable	(80.00)
James McClatchy Co.....	0.00	1,300.00	1,300.00
			\$1,152.87
Net increase			\$1,152.87

(b) The interest received on refund of Federal income tax in the amount of \$192.07 on November 6, 1942, and reported on the 1943 return, is properly taxable in the year received. The net income is, therefore, increased by \$192.07.

(c) It is held that payments in 1942 for interest accrued to date of death upon deficiencies in state income taxes for the years 1935 and 1936 in the amounts of \$371.40 and \$779.27, respectively, and upon Federal income tax for the year 1938 in the amount of \$59.29, of decedent, Ella K. McClatchy (deceased September 23, 1939) are not a proper deduction from income in 1942. The amount of \$14.90 is not a liability of the estate.

The computation of the adjustment to interest paid is as follows:

Interest Payments	Claimed	Allowed	Disallowed
Franchise Tax 1935.....	\$ 652.93	\$281.53	\$ 371.40
Franchise Tax 1936.....	1,611.66	832.39	779.27
Fed. Income Tax 1938.....	306.45	247.16	59.29
Fed. Income Tax.....	14.90	0.00	14.90
Total adjustment			\$1,224.86

(d) It is held that the state income taxes paid in 1942 upon income of decedent, Ella K. McClatchy (deceased September 23, 1939) for the years 1935 and 1936 in the amounts of \$1,797.05 and \$5,313.17, respectively, are not a proper deduction from income in 1942. Income is, therefore, increased by \$7,110.22 (\$1,797.05 plus \$5,313.17).

Explanation of Adjustments
(Continued)

(e) Fees paid for accounting service in connection with final settlement of Federal Estate taxes, expenses covering preparation of data and conferences with attorneys are properly chargeable against the corpus of the estate. The income is increased by the disallowance of the following deductions:

Fees in settlement of Federal Estate Taxes.....	\$ 980.00
Accounting service	112.50
Expenses	4.95
Total adjustment	<u>\$1,097.45</u>

Computation of Alternative Tax
Year: 1942

Net income	\$103,829.14
Net long-term capital gain.....	<u>114.01</u>
Ordinary net income.....	\$103,715.13
Less: Personal exemption.....	<u>500.00</u>
Surtax net income.....	\$103,215.13
Income subject to normal tax.....	<u>\$103,215.13</u>

Normal tax at 6% on 103,215.13.....	\$ 6,192.91
Surtax on \$103,215.13.....	<u>61,679.95</u>
Partial tax	\$ 67,872.86
Add: 50% of net long-term capital gain.....	<u>57.01</u>
Alternative tax	\$ 67,929.87

Computation of Tax
Year: 1942

Net income	\$103,829.14
Less: Personal exemption.....	<u>500.00</u>
Balance (Surtax net income).....	\$103,329.14
Net income subject to normal tax.....	<u>\$103,329.14</u>
Normal tax at 6% on \$103,329.14.....	\$ 6,199.75
Surtax on \$103,329.14.....	<u>61,770.02</u>
Total tax	\$ 67,969.77
Alternative tax	<u>\$ 67,929.87</u>
Correct income tax liability.....	\$ 67,929.87

Income tax assessed:

Original, Account No. 67502

First California District.....	<u>59,289.89</u>
Deficiency of income tax.....	\$ 8,639.98

Adjustments to Net Income
Year: 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return....	\$88,484.43	\$114,414.65
Unallowable deductions and additional income:		
(a) Dividends	\$1,369.37	\$1,369.37
(b) Interest expense....	7.22	
(c) Taxes	814.82	
(d) Other deductions....	60.50	1,429.87
	<hr/>	<hr/>
Total	\$90,736.34	\$115,844.52
Non-taxable income and additional deductions:		
(e) Interest income	192.07	192.07
	<hr/>	<hr/>
Net income as adjusted.....	\$90,544.27	\$115,652.45

EXPLANATION OF ADJUSTMENTS

(a) Income from dividends is increased by \$1,369.37 to adjust for the following corrections in dividends received:

Corporation	Reported	Paid	Increase or (decrease)
200 Natomas Co.	\$ 0.00	\$ 50.00	\$ 50.00
100 Simmons Co.	0.00	99.37	99.37
210 Transamerica Corporation	80.00	Non-taxable	(80.00)
James McClatchy Co.....	0.00	1,300.00	1,300.00
		<hr/>	<hr/>
Net increase			\$1,369.37

(b) It is held that payment in 1943 for interest accrued to date of death in the amount of \$7.22 upon a deficiency in state income tax for the year 1938 of decedent, Ella K. McClatchy (deceased September 23, 1939) is not a proper deduction from income for 1943. Income is, therefore, increased by \$7.22.

In your protest, you claim a deduction of interest in the amount of \$2,223.41 for the year 1943 for interest paid upon a deficiency on State inheritance tax. The deduction was not claimed in your return.

It is held that the interest is not a proper deduction from the estate's income in 1943.

(c) It is held that the state income taxes paid in 1943 upon income of the decedent, Ella K. McClatchy (deceased September 23, 1939) for the years 1938 and 1939 in the amounts of \$271.42 and \$543.40, respectively, are not proper deduction from income for 1943. Income is, therefore, increased by \$814.82 (\$271.42 plus \$543.40).

(d) Deduction of \$60.50 for appraisal fee is disallowed as representing an expense properly chargeable against the corpus of the estate.

(e) Interest income of \$192.07 on refund of Federal income tax received November 5, 1942 is eliminated from 1943 income.

Computation of Tax
Year: 1943

Income tax net income.....	\$90,544.27
Less: Personal exemption.....	500.00
	<hr/>
Surtax net income.....	\$90,044.27
	<hr/>
Balance subject to normal tax.....	\$90,044.27
	<hr/>
Normal tax at 6% on \$90,044.27.....	\$ 5,402.66
Surtax on \$90,044.27.....	51,474.09
	<hr/>
Total income tax.....	\$56,876.75
Victory tax net income.....	\$115,652.45
Less: Specific exemption.....	624.00
	<hr/>
Income subject to victory tax.....	\$115,028.45
Victory tax before credit (5% of \$115,028.45)	\$ 5,751.42
Less: Victory tax credit.....	500.00
	<hr/>
Net victory tax.....	5,251.42
	<hr/>
Correct income and victory tax liability.....	\$62,128.17

Income and victory tax disclosed by return:

(Original, Account No. 185587

First California District)..... \$60,396.92

Deficiency of income and victory tax..... \$ 1,731.25

EXHIBIT B

Petition of Estate of Ella K. McClatchy

Taxes in Controversy, 1942

Taxes Asserted by Commissioner

Tax assessed and paid, per original return..... \$59,289.89

Tax assessed January 24, 1947 and paid

February 1947 1,669.93

Tax deficiency asserted in present notice

(Exhibit A) 8,639.98

Total \$69,599.80

Tax Liability Admitted by Petitioner

Income originally returned.....\$93,051.67

Corrections (refer to deficiency letter):

Item (b) 192.07

Item (e) 1,097.45

\$94,341.19

Less item (a)..... 147.13

\$94,194.06

Exemption 500.00

Taxable income\$93,694.06

Normal tax \$ 5,621.64

Surtax 54,284.43

Total tax admitted..... \$59,906.07

In controversy \$ 9,693.73

EXHIBIT C

Petition of Estate of Ella K. McClatchy

Taxes in Controversy, 1943

Taxes Asserted by Commissioner

Tax assessed and paid per original return..... \$60,396.92

Tax assessed January 24, 1947 and paid

February 1947 1,064.50

Tax deficiency asserted in present notice

(Exhibit A) 1,731.25

Total \$63,192.67

Tax Liability Admitted by Petitioner

Income originally returned.....	\$88,484.43	
Corrections (refer to deficiency letter):		
Item (a)	69.37	
Item (d)	60.50	
		<hr/>
	\$88,614.30	
Less item (b).....	\$2,223.41	
item (e).....	192.07	2,415.48
		<hr/>
	\$86,198.82	
Exemption	500.00	
		<hr/>
Taxable income	\$85,698.82	
		<hr/>
Normal tax		\$ 5,141.93
Surtax		48,214.12
Victory tax as returned.....	\$5,189.53	
Deduct for corrections.....	114.28	5,075.25
		<hr/>
Total tax admitted.....		\$58,431.30
		<hr/>
In controversy		\$ 4,761.37

VERIFICATION

State of California

County of Sacramento—ss.

Eleanor McClatchy, being duly sworn, deposes and says that she has read the petition to which this affidavit is attached and is familiar with the contents thereof, and that the statements contained therein are true, except those founded upon information and belief;—and that, as to such last-mentioned statements, she believes them to be true.

/s/ ELEANOR McCLATCHY.

Subscribed and sworn to before me this 5th day of March, 1947.

[Seal] /s/ HELEN McDUFF,

Notary Public in and for the County of Sacramento,
State of California.

State of California

County of San Francisco—ss.

Charlotte Maloney, being duly sworn, deposes and says that she has read the petition to which this affidavit is attached and is familiar with the contents thereof, and that the statements contained therein are true, except those founded upon information and belief;—and that, as to such last-mentioned statements, she believes them to be true.

/s/ CHARLOTTE MALONEY.

Subscribed and sworn to before me this 4th day of March, 1947.

[Seal] /s/ MARION M. BENDER,
Notary Public in and for the City and County of
San Francisco, State of California.

My Comission Expires Dec. 24, 1950.

Received and filed March 7, 1947 T.C.U.S.

[Title of Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioners, admits, denies, and alleges as follows:

(1) Admits the allegations contained in paragraph (1) of the petition.

(2) Admits that the notice of deficiency was mailed to the petitioners on December 11, 1946; denies the remaining allegations contained in paragraph (2) of the petition.

(3) Denies the allegations contained in paragraph (3) of the petition and alleges that respondent has asserted a deficiency of \$8,639.98 in income tax for the taxable year 1942, and a deficiency of \$1,731.25 in income and victory tax for the taxable year 1943.

(4) (A), (B), (C), (D). Denies the allegations of error contained in subparagraphs (A), (B), (C), and (D) of paragraph (4) of the petition.

(5) (A)—(1) to (A)—(4), inclusive. Admits the allegations contained in subparagraphs (A)—(1) to (A)—(4), inclusive, of paragraph (5) of the petition.

(5) (B)—(1). For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph (B)—(1) of paragraph (5) of the petition.

For lack of knowledge or information sufficient to form a belief, denies the allegations contained in the three unnumbered paragraphs appearing on the third (unnumbered) page of the petition.

(5) (B)—(2) to (C)—(1), inclusive. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraphs (B)—(2) to (C)—(1), inclusive, of paragraph (5) of the petition.

(5) (C)—(2). Admits that in 1939 the State

Tax Commissioner, acting under the provisions of Section 34 of the Personal Income Tax Act, asserted against Ella K. McClatchy additional income taxes for the years 1935 and 1936 totaling \$7,110.22 and that the tax was protested; denies the remaining allegations contained in subparagraph (C)—(2) of paragraph (5) of the petition.

(5) (C)—(3). Admits that Ella K. McClatchy died in September 1939; that on March 7, 1941 the State Supreme Court ruled against McCreery and held section 34 of the Personal Income Tax Act to be constitutional; and that the said tax of \$7,110.22, together with \$2,264.59 interest, was paid out of the funds of the Estate of Ella K. McClatchy; denies the remaining allegations contained in subparagraph (C)—(3) of paragraph (5) of the petition.

(5) (C)—(4). Admits the allegations contained in subparagraph (C)—(4) of paragraph (5) of the petition.

(5) (C)—(5). Admits that the report of the examining revenue agent in this case issued September 19, 1945; that in the examiner's report it is stated:

“These taxes [viz., the \$7,110.22 state taxes for 1935 and 1936] accrued on September 29, 1939, the date of death of the decedent. The deduction was allowable in the return of the decedent * * *.”; denies the remaining allegations contained in subparagraph (C)—(5) of paragraph (5) of the petition.

(5) (C)—(6). Admits that on October 9, 1945,

claim for refund of taxes paid by the decedent Ella K. McClatchy for 1939 was filed with the Collector at San Francisco and that this claim was denied by the Commissioner January 6, 1947; denies the remaining allegations contained in subparagraph (C)—(6) of paragraph (5) of the petition.

(5) (D)—(1). Admits that the State of California demanded additional inheritance taxes from the heirs of Ella K. McClatchy, together with interest on the said additional taxes amounting to \$2,-223.41, and that this interest (as well as the additional tax) was paid in December 1943; denies the remaining allegations contained in subparagraph (D)—(1) of paragraph (5) of the petition.

(6). Denies each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ J. P. WENCHEL,

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel.

T. M. MATHER,

LEONARD A. MARCUSSEN,

Special Attorneys,

Bureau of Internal Revenue.

Received and filed May 7, 1947 T.C.U.S.

The Tax Court of the United States

Docket No. 13214

ESTATE OF ELLA K. McCLATCHY,
ELEANOR McCLATCHY and
CHARLOTTE MALONEY, Executrices,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 13215

CHARLOTTE MALONEY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 13216

ELEANOR McCLATCHY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION

It is hereby stipulated and agreed that the above-entitled proceedings may be consolidated for opinion and submitted under Rule 30 of the Tax Court's Rules of Practice. [In Pen] & Stip. of facts.

It is further stipulated and agreed that the following facts are true:

1. Eleanor McClatchy and Charlotte Maloney are now and have been the executrices of the last will of Ella K. McClatchy (Est. of Ella K. McClatchy—Docket No. 13214) and the taxes which are in controversy are

(a) Deficiency in income tax for the year 1942 asserted by the Commissioner in the amount of \$8,639.98;

(b) Deficiency in income and victory taxes for the year 1943 asserted by the Commissioner in the amount of \$1,731.25 and

(c) Claimed overpayment in the amount of \$1,912.12 for the taxable year 1943.

2. The petitioner Charlotte Maloney, Docket No. 13215, is the sole beneficiary of Charles K. McClatchy Trust No. 2 which trust was entitled to and did receive one-third of the estate of said decedent, and the taxes in controversy are income and victory taxes for the calendar year 1943 in the aggregate amount of \$213.54.

3. The petitioner Eleanor McClatchy, Docket No. 13216, is the sole beneficiary of Charles K. McClatchy Trust No. 1 which trust was entitled to and did receive one-third of the estate of said decedent, and the taxes in controversy are income and victory taxes for the calendar year 1943 in the aggregate amount of \$2,904.43.

4. Ella K. McClatchy died September 23, 1939, and Charles K. McClatchy died April 27, 1936.

5. During the lifetime of Ella K. McClatchy but after the death of Charles K. McClatchy, to wit, on January 23, 1939, the Franchise Tax Commissioner of the State of California, acting pursuant to section 34 of the Personal Income Tax Act of 1935, assessed additional income taxes against Ella K. McClatchy in the amount of \$1,797.05 and assessed additional income taxes against Charles K. McClatchy in the amount of \$1,791.64 for the taxable period ending December 31, 1935.

6. On April 1, 1940, said Franchise Tax Commissioner levied an additional income tax against Ella K. McClatchy in the amount of \$5,313.17 and against the Estate of Charles K. McClatchy in the amount of \$2,170.44, for the taxable period ending December 31, 1936.

7. Section 34 of the California Personal Income Tax Act of 1935 (the basis for the additional income taxes above mentioned) was attacked in the state courts as unconstitutional. Payment of the additional taxes was protested and payment thereof was not made pending a determination of the constitutionality of the statute under which said additional taxes were assessed.

8. Section 34 of said act was upheld as constitutional by the Supreme Court of California on March 7, 1941, and thereafter, on or about May 5, 1942, petitioner in Docket No. 13214 paid said additional taxes asserted against Ella K. McClatchy in the total sum of \$7,110.22 plus interest thereon in the sum of \$2,264.59. The additional taxes asserted

against Charles K. McClatchy and his estate totaling \$3,932.08, together with \$1,309.33 interest, were paid on or about May 5, 1942, out of the funds of the three testamentary trusts created by the will of Charles K. McClatchy. One-third of the amount, or \$1,747.14, was paid by the Charles K. McClatchy Trust No. 2 of which the petitioner in Docket No. 13215 was the sole beneficiary, and \$1,747.14 was paid by the Charles K. McClatchy Trust No. 1, of which the petitioner in Docket No. 13216 was the sole beneficiary.

9(a). The Federal income tax return for the year 1942 filed for the Estate of Ella K. McClatchy showed an income tax liability of \$59,289.89 which was paid to the Collector of Internal Revenue at San Francisco. In said return for the year 1942 there were claimed deductions for said sum of \$7,110.22 additional California state income tax paid in that year and interest thereon in the sum of \$2,264.59.

9(b). Thereafter in February, 1947, additional Federal income taxes for the year 1942 in the sum of \$1,669.93 and interest of \$362.05 were paid for said estate, computed upon items not in controversy herein and the amount of said additional tax was not credited by the Commissioner in his deficiency letter of December 11, 1946, a copy of which is attached to the petition herein.

10(a). The Federal income and victory tax return of the Estate of Ella K. McClatchy for the year 1943 was filed with the Collector of Internal

Revenue for the First District of California on March 14, 1944, showing an income and victory tax liability of \$60,396.92, which amount was paid in two installments, the first installment of \$15,-099.23 having been paid on March 14, 1944, and the final installment of \$45,297.69 on March 27, 1944.

10(b). On February 6, 1947, an additional Federal income tax for the year 1943 in the sum of \$1,064.50, together with interest in the sum of \$166.92, was paid by the Estate of Ella K. McClatchy, computed upon items not in controversy herein, and the amount of said additional tax was not credited by the Commissioner in his deficiency letter of December 11, 1946, a copy of which is attached to the petition herein.

11. In determining the deficiencies against these petitioners the respondent has disallowed the deduction claimed by the Estate of Ella K. McClatchy in the sum of \$7,110.22 for 1942 and \$1,150.67 interest accrued to the date of said decedent's death out of the total interest of \$2,264.59 specified in paragraph 9 herein, and has disallowed the deduction of \$1,747.14 claimed by each of the petitioners Charlotte Maloney and Eleanor McClatchy in their income and victory tax returns for the year 1943 filed with the Collector at San Francisco.

12. In December, 1942, said Franchise Tax Commissioner for the State of California assessed against Ella K. McClatchy, deceased, an additional

income tax of \$271.42 for the year 1938. This tax plus \$63.85 interest was paid April 1, 1943. In December, 1942, a like assessment was made for 1939 in the amount of \$543.40. This amount plus \$101.03 interest was paid in two installments, \$156.53 on May 21, 1943, and \$487.90 on June 5, 1943.

13. In December, 1943, the State of California assessed additional inheritance taxes against the Estate of Ella K. McClatchy in the amount of \$5,304.41, together with interest thereon, in the amount of \$2,223.41. The additional tax and interest thereon in said amount was paid by the McClatchy Newspapers and charged on their books to the three testamentary trusts of Charles K. McClatchy. The three trusts claimed the tax and interest as a deduction in their returns for 1943 which deduction was disallowed by the Commissioner of Internal Revenue.

14. The Estate of Ella K. McClatchy claimed that the charge by McClatchy Newspapers to the three C. K. McClatchy trusts had been erroneous and that the charge should have been made to the Estate of Ella K. McClatchy and the correction was accordingly made on June 1, 1944 on the books of the McClatchy Newspapers. Said returns were filed on the cash receipts and disbursements basis. No deduction was claimed by the Estate of Ella K. McClatchy in its Federal income tax return for the year 1943 for said interest payment and said amount has not been claimed or allowed as a deduc-

tion in the return of the Estate of Ella K. McClatchy for any taxable year.

15. On October 9, 1945, the Estate of Ella K. McClatchy filed its claim for refund of income taxes allegedly overpaid in the amount of \$5,788.28 for the year 1939. Said claim for refund was denied by the Commissioner on January 6, 1947.

16(a). The Federal estate tax return of the Estate of Charles K. McClatchy was filed July 24, 1937 and final settlement of the estate tax liability was effected May 14, 1940.

16(b). The Federal estate tax return of the Estate of Ella K. McClatchy was filed December 20, 1940. A closing agreement was executed between the Commissioner and the executrices of the Estate of Ella K. McClatchy on June 11, 1942.

17. In the Federal estate tax returns of the Estate of Ella K. McClatchy and the Estate of Charles K. McClatchy no deduction was taken under section 812(b) of the Internal Revenue Code for the amount of additional income taxes paid to the State of California and specified in Paragraphs 5, 6 and 12 hereof. No waivers or consents have been filed by or on behalf of said estates by the executrices or any beneficiaries with the respondent pursuant to section 134 of the Revenue Act of 1942 or section 126 of the Internal Revenue Code and the regulations promulgated by the Commissioner thereunder.

18. No deduction for any of said amounts assessed by the State of California as additional in-

come taxes for either of the years 1935 or 1936 against Ella K. McClatchy, or for interest thereon, was claimed by the Estate of Ella K. McClatchy in the final income tax returns of said decedent.

19. No deduction for interest on said additional inheritance tax assessed by the State of California has been taken by the Estate of Ella K. McClatchy in any Federal tax return.

20. It is requested that the Tax Court fix the time for filing briefs in accordance with Rule 35 of the Tax Court's Rules of Practice, the opening briefs to be filed 45 days from the date this stipulation is filed with the Tax Court.

/s/ JOHN W. BURROWS,
Counsel for Petitioners.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

Of Counsel:

/s/ JOHN J. HAMLYN,
for Petitioners.

B. H. NEBLETT,
Division Counsel,

T. M. MATHER,
Special Attorney,
Bureau of Internal Revenue,
For Respondent.

Received and filed May 19, 1948 T.C.U.S.

[Title of Court and Cause.]

SUPPLEMENTAL STIPULATION

It is hereby stipulated and agreed, supplementary to the stipulation filed in the above consolidated cases pursuant to Rule 30 of the Rules of Practice of the Tax Court of the United States, that the following facts are true:

1. The beneficiaries of the three trusts created by Charles K. McClatchy, deceased, including petitioners Charlotte Maloney and Eleanor McClatchy, were also at all times subsequent to September 23, 1939, (the date of death of Ella K. McClatchy), the beneficiaries, respectively, of the three trusts created by the last will of Ella K. McClatchy, deceased.

2. That the interest on the additional inheritance tax levied by the State of California, in the amount of \$2,223.41, as specified in Paragraph 13 of the Stipulation of Facts, was claimed by said beneficiaries in their returns for 1943 as a deduction, but that the tax itself was not so claimed. That said interest was disallowed as a deduction.

3. That the final Federal income tax return for Charles K. McClatchy, deceased, was filed with the Collector of Internal Revenue on or about March 15, 1937, and the final Federal income tax

return for Ella K. McClatchy, deceased, was filed on or about March 15, 1940.

/s/ JOHN W. BURROWS, CPA,
Counsel for Petitioners.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

Of Counsel:

/s/ JOHN J. HAMLYN,
for Petitioners.

B. H. NEBLETT,
Division Counsel,

T. M. MATHER,
Special Attorney,
Bureau of Internal Revenue,
For Respondent.

Received and filed Aug. 23, 1948 T.C.U.S.

The Tax Court of the United States
Washington

Docket No. 13214

ESTATE OF ELLA K. McCLATCHY, ELEA-
NOR McCLATCHY and CHARLOTTE MA-
LONEY, EXECUTRICES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion promulgated in the above entitled proceeding on March 18, 1949, counsel for respondent filed a re-computation of petitioner's tax liability on April 13, 1949. Hearing under Rule 50 was held on May 11, 1949, at which time no appearance was made on behalf of petitioner, and respondent's computation has not been contested. Now, therefore, after due consideration, it is

Ordered and Decided: That there is a deficiency in petitioner's income tax for the year ended December 31, 1942, in the amount of \$8,639.98, and that there is a deficiency in petitioner's income and victory tax for the year ended December 31, 1943, in the amount of \$1,731.25.

[Seal] /s/ JOHN W. KERN,

Judge.

Entered May 12, 1949.

Served May 13, 1949.

The Tax Court of the United States
Washington

Docket No. 13215

CHARLOTTE MALONEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion promulgated in the above entitled proceeding on March 18, 1949, counsel for respondent filed a re-computation of petitioner's tax liability on April 13, 1949. Hearing under Rule 50 was held on May 11, 1949, at which time no appearance was made on behalf of petitioner, and respondent's computation has not been contested. Now, therefore, after due consideration, it is

Ordered and Decided: That there is a deficiency in petitioner's income and victory tax for the year ended December 31, 1943, in the amount of \$213.54.

[Seal] /s/ JOHN W. KERN,

Judge.

Entered May 12, 1949.

Served May 13, 1949.

The Tax Court of the United States
Washington

Docket No. 13216

ELEANOR McCLATCHY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion promulgated in the above entitled proceeding on March 18, 1949, counsel for respondent filed a re-computation of petitioner's tax liability on April 13, 1949. Hearing under Rule 50 was held on May 11, 1949, at which time no appearance was made on behalf of petitioner, and respondent's computation has not been contested. Now, therefore, after due consideration it is

Ordered and Decided: That there is a deficiency in petitioner's income and victory tax for the year ended December 31, 1943, in the amount of \$2,904.43.

[Seal] /s/ JOHN W. KERN,
Judge.

Entered May 12, 1949.

Served May 13, 1949.

[Title of Court and Cause]

P E T I T I O N FOR REVIEW BY UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

The above-named Estate of Ella K. McClatchy, Eleanor McClatchy and Charlotte Maloney, Executrices, files the within petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States, rendered in the above-entitled case on March 18, 1949.

I.

Jurisdiction

The decision of the Tax Court aforesaid was entered on May 12, 1949, and found a deficiency in income tax due from your petitioner for the calendar year 1942 in the amount of \$8639.98, and further deficiency for the year 1943 in the amount of \$1,731.25.

Petitioner at the time of filing this petition is an estate administered in the County of Sacramento, State of California. Eleanor McClatchy and Charlotte Maloney, the executrices of said estate, are both residents of the State of California.

The tax returns in respect of which the said liability arose were filed by petitioner with the Collector of Internal Revenue for the First Collection District of California, located in the City of San Francisco in the State of California, which is within the jurisdiction of this court.

II.

Nature of Controversy

1. The controversy in this case arises by reason

of the income tax deficiency for the taxable year 1942 in the amount of \$8,639.98, and the income and victory tax deficiency for the year 1943 in the amount of \$1,731.25, respectively, asserted by respondent against petitioner, based upon the following items:

(a) Disallowance of the deduction claimed by petitioner in its income tax return for the year 1942 for the payment in said year of additional California state income taxes assessed against Ella K. McClatchy for the years 1935 and 1936, in the total amount of \$7,114.22, together with interest thereon accrued to the date of death of Ella K. McClatchy in the amount of \$1,150.67.

(b) Disallowance of deduction claimed by petitioner for interest paid on additional inheritance tax levied by the State of California in the year 1943 against petitioner, said interest being in the amount of \$2,223.41.

2. Petitioner has paid Federal income taxes for the taxable year 1942 and assessed in January, 1947, in the amount of \$1,669.93 for which petitioner is entitled to credit in the determination of petitioner's tax liability for the year 1942. Said payment was not taken into account by the Tax Court in its said decision.

3. Petitioner has likewise paid Federal income taxes for the year 1943 and assessed in January, 1947, in the amount of \$1,064.50, for which petitioner is entitled to credit in the determination of petitioner's tax liability for the year 1943. Said

payment was not taken into account by the Tax Court in its said decision.

4. Petitioner also claims an overpayment of \$1,912.12 in its income and victory tax for the year 1943, which claim is resisted by respondent.

/s/ JOHN J. HAMLYN,

Attorney and Counsel for
Petitioner.

State of California,
County of Sacramento—ss.

John J. Hamlyn, being duly sworn, deposes and says that he is an attorney-at-law and counsel of record for the petitioner in this proceeding, that he caused to be prepared the foregoing petition and is familiar with the contents thereof, that allegations of fact therein are true to the best of his knowledge, information and belief, that said petition is not filed for the purpose of delay, and that he believes the petitioner is justly entitled to the relief sought.

/s/ JOHN J. HAMLYN,

Attorney and Counsel for
Petitioner.

Subscribed and sworn to before me this 4th day of June, 1949.

[Seal] /s/ HELEN McDUFF,

Notary Public in and for the County of Sacramento,
State of California.

My Commission Expires March 22, 1950.

Received and filed June 14, 1949 T.C.U.S.

[Title of Court and Cause]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 12, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Praecipe" in the proceeding before The Tax Court of the United States entitled "Estate of Ella K. McClatchy, Eleanor McClatchy, and Charlotte Maloney, Executrices, Petitioners, v. Commissioner of Internal Revenue, Respondent," Docket No. 13214, and in which the petitioner in the Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 11th day of July, 1949.

[Seal] /s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: Nos. 12289 - 12290 - 12291. United States Court of Appeals for the Ninth Circuit. Estate of Ella K. McClatchy, Eleanor McClatchy and Charlotte Maloney, Executrices, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Charlotte Maloney, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Eleanor McClatchy, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petitions to Review Decisions of the Tax Court of the United States.

Filed July 15, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

Docket No. 12289

ESTATE OF ELLA K. McCLATCHY, ELEA-
NOR McCLATCHY, and CHARLOTTE MA-
LONEY, Executrices,

Petitioner,

vs.

COMMISSSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS RELIED
ON BY PETITIONER

Petitioner in the above cause, in accordance with

Rule 19, herewith states the points upon which it relies in the review of the decision of the Tax Court of the United States:

1. The additional California state income taxes for the years 1935 and 1936, assessed against Ella K. McClatchy after her death, and protested by petitioner, did not accrue until March 7, 1941, the date when the statute under which said tax was levied, was declared constitutional by the California Supreme Court. Petitioner was, therefore, entitled to take the deduction for said taxes in its 1942 income tax return.

2. The filing of waivers or consents under Section 134 of the Revenue Act of 1942, or under Section 126 of the Internal Revenue Code, was unnecessary and would have constituted an entirely idle act, since petitioner had nothing to waive or consent to, in view of the fact that the Statute of Limitations prevented petitioner from taking the deduction for the payment of said state taxes in either the final return of the decedent, or the federal estate tax return.

3. Petitioner is entitled to relief from the effect of the Statute of Limitations and the determination of the Tax Court of the United States by reason of Section 3801 of the Internal Revenue Code.

4. Petitioner is entitled to have a credit on its tax liability for the amount of \$1,669.93, assessed in January, 1947, and paid by petitioner.

5. Petitioner is entitled to a decision that petitioner has overpaid its income and victory tax for the year 1943 in the sum of \$1,912.12.

JOHN J. HAMLYN,

Attorney for petitioner.

Dated: August 4, 1949.

[Endorsed]: Filed Aug. 5, 1949.

[Title of Court of Appeals and Cause.]

AMENDED DESIGNATION OF RECORD
FOR PURPOSE OF REVIEW

Petitioner in the above cause, pursuant to Rule 19, herewith designates the portion of the record which is material to consideration of the review of the decision of the Tax Court of the United States, as follows:

1. The petition.
2. The answer to the petition.
3. The stipulation of facts.
4. The supplemental stipulation of facts.
5. The decision of the Tax Court of the United States.

Dated: August 20, 1949.

/s/ JOHN J. HAMLYN,

Attorney for Petitioner.

[Endorsed]: Filed Aug. 22, 1949.

United States Court of Appeals
For the Ninth Circuit

Docket No. 12289

ESTATE OF ELLA K. McCLATCHY, ELEA-
NOR McCLATCHY, and CHARLOTTE MA-
LONEY, Executrices,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 12290

CHARLOTTE MALONEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 12291

ELEANOR McCLATCHY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION RE CONSOLIDATION
OF CAUSES ON REVIEW

It is hereby stipulated and agreed by the parties
to the above-entitled causes, through their respec-

tive counsel, that said causes may be consolidated into one cause for the purposes of a review of the decision of the Tax Court of the United States by the United States Court of Appeals for the Ninth Circuit. It is further stipulated that hearing of said motion and notice of hearing thereon are waived.

Dated: August 5, 1949.

/s/ JOHN J. HAMLYN,

Attorney for petitioners.

/s/ CHARLES OLIPHANT,

General Counsel,

Bureau of Internal Revenue,

Attorney for respondent.

Filed Aug. 19, 1949. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

MOTION FOR CONSOLIDATION
OF CAUSES ON REVIEW

Come now petitioners in the above causes and move this honorable court for an order consolidating said causes into one cause for the purposes of a review of the decision of the Tax Court of the United States by the United States Court of Appeals for the Ninth Circuit.

/s/ JOHN J. HAMLYN,

Attorney for petitioners.

To the Commissioner of Internal Revenue, Respondent herein, and to Charles Oliphant, his counsel:

Please take notice that the undersigned, counsel for petitioners, will bring the above motion on for hearing before this Court on the 22nd day of August, 1949 in the court room of said Court in the City of San Francisco, California, at 10 o'clock a.m. of said day, or as soon thereafter as counsel may be heard.

Dated: August 18, 1949.

/s/ JOHN J. HAMLYN,
Counsel for Petitioners.

Points and Authorities

The court may, in causes of a like nature or relative to the same question, consolidate said causes when it appears reasonable to do so. (28 U.S. Code, Sec. 734.)

Consolidation of causes may be made for the purposes of avoiding unnecessary costs or delay. (Davis vs. St. Louis, 25 Fed. 786; Adler vs. Seaman, 266 Fed. 828, Cert. Den. 254 U. S. 655; 28 U. S. Code, Sec. 734.)

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ HOMER BONE.

/s/ WM. E. ORR,
United States Circuit Judges.